

LAWYERS FOR CLEAN WATER, INC.  
Caroline Koch (Bar No. 266068)  
Email: caroline@lawyersforcleanwater.com  
Daniel Cooper (Bar No. 153576)  
Email: daniel@lawyersforcleanwater.com  
1004-A O'Reilly Avenue  
San Francisco, California 94129  
Telephone: (415) 440-6520  
Facsimile: (415) 440-4155

SAN FRANCISCO BAYKEEPER  
Erica A. Maharg (Bar No. 279396)  
Email: erica@baykeeper.org  
Nicole C. Sasaki (Bar No. 298736)  
Email: nicole@baykeeper.org  
1736 Franklin Street, Suite 800  
Oakland, California 94612  
Telephone: (510) 735-9700  
Facsimile: (510) 735-9160

*Attorneys for Plaintiff*

SAN FRANCISCO BAYKEEPER

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO BAYKEEPER, a California  
non-profit corporation;

Plaintiff,

v.

DARLING INGREDIENTS, INC., a Delaware  
Corporation;

Defendant.

Civil Case No.

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

San Francisco Baykeeper (“Baykeeper” or “Plaintiff”), by and through counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provision of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

2. On February 24, 2017, Baykeeper issued a 60-day notice letter (“Notice Letter”) to Darling Ingredients, Inc. (“Darling” or “Defendant”), which is attached hereto as Exhibit A and incorporated by reference herein. The Notice Letter informed Darling of its violations of California’s General Permit for Discharges of Storm Water Associated with Industrial Activities (*National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ*) (hereinafter “Storm Water Permit”), of San Francisco Municipal Code, Public Works Code, Article 4.1 (“Pretreatment Ordinance”), Permit No. 10-06513 Industrial User Class I Wastewater Permit, Permit No. 13-06983 Industrial User Class I Wastewater Permit, and Permit No. 16-06568 Industrial User Class I Wastewater Permit (collectively referred to as “the Pretreatment Permits”), and the Clean Water Act at its industrial facility located at 429 Amador Street, San Francisco, California 94124 (“Facility”). The Notice Letter also informed Darling of Plaintiff’s intent to file suit against Defendant to enforce the Storm Water Permit, the Pretreatment Ordinance, the Pretreatment Permits, and the Clean Water Act.

3. The Notice Letter was sent to the registered agent for Defendant, the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board (“State Board”), the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”), the General Manager of the San Francisco Public Utilities Commission (“PUC”), the San Francisco City Attorney, and the San Francisco District Attorney, as required by 40 C.F.R. § 135.2(a)(1), Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and/or the Pretreatment Ordinance.

4. More than sixty (60) days have passed since the Notice Letter was served on Defendant

1 and the State, Federal, and local agencies. Plaintiff is informed and believes, and thereon alleges, that  
2 neither the EPA, the State of California, nor the City of San Francisco has commenced or is diligently  
3 prosecuting an action to redress the violations alleged in the Notice Letter and in this complaint. *See* 33  
4 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior administrative penalty under Section  
5 309(g) of the CWA. 33 U.S.C. § 1319(g).

6 5. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the  
7 CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial  
8 district.

9 6. Intradistrict assignment of this matter to the San Francisco Division of the Court is  
10 appropriate pursuant to Civil Local Rule 3-2(d). The events or omissions which give rise to Baykeeper's  
11 claims occurred in the County of San Francisco, which is under the jurisdiction of the San Francisco  
12 Division of the Northern District of California.

13 7. Plaintiff seeks relief for Defendant's substantive and procedural violations of the Storm  
14 Water Permit, the Pretreatment Ordinance, the Pretreatment Permits, and the Clean Water Act resulting  
15 from industrial activities at the Facility.

## 16 **II. PARTIES**

### 17 **A. San Francisco Baykeeper.**

18 8. Plaintiff San Francisco Baykeeper is a non-profit public benefit corporation organized  
19 under the laws of the State of California with its main office in Oakland, California. Baykeeper's mission  
20 is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and  
21 other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper's  
22 approximately 1,500 members live and/or recreate in and around the San Francisco Bay area. Baykeeper is  
23 dedicated to protecting the water quality of San Francisco Bay for the benefit of its ecosystems and  
24 communities. To further these goals, Baykeeper actively seeks federal and state agency implementation of  
25 the CWA, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

26 9. Members of Baykeeper, including citizens, taxpayers, property owners, and residents, live,  
27 work, and travel near and recreate in San Francisco Bay and its tributaries, including San Francisco Bay,  
28 into which Defendant discharges pollutants. Baykeeper members use and enjoy San Francisco Bay and its

1 tributaries for recreational, educational, scientific, conservation, aesthetic, spiritual, and other purposes.  
 2 Defendant's discharges of storm water containing pollutants impair each of these uses. Thus, the interests  
 3 of Baykeeper's members have been, are being, and will continue to be adversely affected by Defendant's  
 4 failure to comply with the CWA, the Storm Water Permit, the Pretreatment Ordinance, and the  
 5 Pretreatment Permits.

6 **B. The Owner and/or Operator(s) of the Facility.**

7 10. Plaintiff is informed and believes, and thereon alleges, that Darling Ingredients, Inc. is the  
 8 owner of the Facility.

9 11. Plaintiff is informed and believes, and thereon alleges, that Darling Ingredients, Inc. is the  
 10 operator of the Facility.

11 12. Plaintiff is informed and believes, and thereon alleges, that Darling Ingredients, Inc. is an  
 12 active Delaware Corporation registered to do business in California.

13 13. Plaintiff refers to Darling Ingredients, Inc. herein as the "Facility Owner and/or Operator."

14 14. Plaintiff is informed and believes, and thereon alleges, that the name and address of the  
 15 Registered Agent for Darling Ingredients, Inc. is C T Corporation System 818 W. 7th Street, Suite 930  
 16 Los Angeles, California 90017.

17 **III. LEGAL BACKGROUND**

18 **A. Clean Water Act Regulation of Storm Water Associated with Industrial Activities.**

19 15. The Clean Water Act requires point source discharges of pollutants to navigable waters  
 20 be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).

21 16. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
 22 any pollutant into waters of the United States unless the discharge complies with various enumerated  
 23 Sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized by, or in  
 24 violation of, the terms of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C.  
 25 §§ 1311(a) and 1342(b).

26 17. The "discharge of a pollutant" means, among other things, "any addition of any pollutant  
 27 to navigable waters from any point source." 33 U.S.C. § 1362(12); *see* 40 C.F.R. § 122.2.

28 18. Section 402(p) of the Clean Water Act establishes a framework for regulating industrial

1 storm water discharges under the NPDES permit program. 33 U.S.C. § 1342(p).

2 19. Section 402(b) of the Clean Water Act allows each state to administer its own EPA-  
3 approved NPDES permit program for regulating the discharge of pollutants, including discharges of  
4 polluted storm water. *See* 33 U.S.C. § 1342(b). States with approved NPDES permit programs are  
5 authorized by section 402(b) to regulate industrial storm water discharges through individual NPDES  
6 permits issued to dischargers and/or through the issuance of a statewide general NPDES permit  
7 applicable to all industrial storm water dischargers. *See id.*

8 20. Storm water runoff is one of the most significant sources of water pollution in the nation  
9 and has been recognized as a leading cause of significant and cumulative harmful impacts to the water  
10 quality of San Francisco Bay. With every significant rainfall event, hundreds of millions of gallons of  
11 polluted rainwater flow from local industrial facilities, such as the Facility, and pour into storm drains,  
12 local tributaries, and San Francisco Bay. The consensus among state and federal agencies and water  
13 quality specialists is that storm water pollution accounts for more than half of the total pollution entering  
14 the San Francisco Bay watershed each year.

15 **B. California's Storm Water Permit.**

16 21. California is a state authorized by EPA to issue NPDES permits.

17 22. In California, the State Board is charged with regulating pollutants to protect California's  
18 water resources. *See* Cal. Water Code § 13001.

19 23. The Storm Water Permit is a statewide general NPDES permit issued by the State Board  
20 pursuant to the Clean Water Act.

21 24. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-  
22 DWQ, which Plaintiff refers to as the "1997 Permit."

23 25. On July 1, 2015, pursuant to Order No. 2014-0057-DWQ, the Storm Water Permit was  
24 reissued, which Plaintiff refers to as the "2015 Permit."

25 26. The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its  
26 terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Finding 6.

27 27. In order to discharge storm water lawfully in California, industrial dischargers must  
28 secure coverage under the Storm Water Permit and comply with its terms, or obtain and comply with an

individual NPDES permit. 1997 Permit, Finding #2; 2015 Permit, Finding 12. Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”) to the State Board. *See* 1997 Permit, Finding #3; *see also* 2015 Permit, Finding 17.

28. Violations of the Storm Water Permit are violations of the Clean Water Act. *See* 1997 Permit, Section C(1) (Standard Provisions); *see also* 2015 Permit, Section XXI(A) (Duty to Comply).

29. Defendant submitted a Notice of Intent to comply with the 1997 Permit to the State Board on or around May 21, 1997.

30. Defendant submitted a Notice of Intent to comply with the 2015 Permit to the State Board on or around June 9, 2015.

**C. The Storm Water Permit Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations.**

31. The Storm Water Permit contains certain absolute prohibitions. The Storm Water Permit prohibits the direct or indirect discharge of materials other than storm water (“non-storm water discharges”), which are not otherwise authorized by an NPDES permit, to the waters of the United States. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III(B).

32. The Storm Water Permit Effluent Limitations require dischargers covered by the Storm Water Permit to reduce or prevent pollutants in storm water discharges through the implementation of Best Available Technology Economically Achievable (“BAT”) for toxic or non-conventional pollutants, and Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), oil and grease (“O&G”), and pH. *See* 1997 Permit, Effluent Limitation B(3); *see also* 2015 Permit, Section V(A).

33. Pursuant to the CWA and the Storm Water Permit, dischargers must employ Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate storm water pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation B(3); 2015 Permit, Effluent Limitation

1 V(A).

2 34. EPA's NPDES Storm Water Multi-Sector General Permit for Industrial Activities  
3 ("MSGP") includes numeric benchmarks for pollutant concentrations in storm water discharges ("EPA  
4 Benchmarks").

5 35. The EPA Benchmarks provide an objective standard to determine whether a facility's  
6 BMPs are successfully developed and/or implemented. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June  
7 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-  
8 67 (Oct. 30, 2000).

9 36. According to EPA's Industrial Stormwater Fact Sheet for Section U, Food and Kindred  
10 Products Facilities, polluted discharges from rendering plants such as the Facility contain BOD, TSS, oil  
11 and grease ("O&G"), pH, and nitrogen nitrate + nitrite ("N+N").

12 37. The EPA Benchmarks for the following parameters are as follows: BOD, 30 mg/L;  
13 chemical oxygen demand ("COD"), 120 mg/L; pH, 6.0 – 9.0 standard units ("SU"); TSS, 100 mg/L;  
14 iron, 1.0 mg/L; N+N, 0.68 mg/L; O&G, 15 mg/L; and aluminum, 0.75 mg/L. Additional EPA  
15 Benchmarks for heavy metals as follows also apply to storm water discharges from the Facility: copper,  
16 0.0048 mg/L; and zinc, 0.09 mg/L.

17 38. Storm water runoff from industrial sites such as the Facility causes harm to humans and  
18 aquatic life. In particular, storm water can contain heavy metal pollutants such as aluminum, chromium,  
19 copper, iron, lead, mercury, nickel, tin, and zinc, as well as high concentrations of suspended solids, and  
20 nitrate and nitrite. Exposure and ingestion of heavy metals can cause health problems in people and  
21 aquatic animals, including neurological, physiological, and reproductive effects. Heavy metals have  
22 been shown to alter activity in tissues and blood of fish.

23 39. High concentrations of TSS degrade optical water quality by reducing water clarity and  
24 decreasing light available to support photosynthesis. TSS have been shown to alter predator-prey  
25 relationships (for example, turbid water might make it difficult for fish to see their prey). Deposited  
26 solids alter habitat for fish, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic  
27 life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons ("PAHs"), are  
28 adsorbed onto TSS. Thus, higher concentrations of TSS mean higher concentrations of toxins associated



1 with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been  
2 shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic  
3 organisms on bottom surfaces.

4 40. Discharges from an industrial facility containing pollutant concentrations that exceed  
5 EPA Benchmarks indicate that BMPs that meet BAT for toxic pollutants and/or BCT for conventional  
6 pollutants have not been developed and/or implemented at the facility.

7 41. The Storm Water Permit Receiving Water Limitations prohibit storm water discharges  
8 from adversely impacting human health or the environment. *See* 1997 Permit, Receiving Water  
9 Limitation C(1); *see also* 2015 Permit, Section VI(B).

10 42. Storm water discharges with pollutant levels that exceed levels known to adversely  
11 impact aquatic species and the environment are violations of Receiving Water Limitation C(1) of the  
12 1997 Permit and Section VI(B) of the 2015 Permit.

13 43. The Storm Water Permit Receiving Water Limitations also prohibit storm water  
14 discharges that cause or contribute to an exceedance of any “applicable Water Quality Standard in a  
15 Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.” *See* 1997 Permit,  
16 Receiving Water Limitation C(2); *see also* 2015 Permit, Receiving Water Limitation VI(A).

17 44. Water Quality Standards (“WQS”) are pollutant concentration levels determined by the  
18 State Board, the various regional boards, and the EPA to be protective of the beneficial uses of the  
19 waters that receive polluted discharges.

20 45. The State of California regulates water quality through the State Board and nine Regional  
21 Boards, and each Regional Board maintains a separate Water Quality Control Plan which contains  
22 Water Quality Standards for water bodies within its geographic area.

23 46. The Water Quality Control Board, San Francisco Bay Region has adopted the “San  
24 Francisco Bay Basin (Region 2) Water Quality Control Plan” (“Basin Plan”), as amended by Resolution  
25 No. R2-2010-0100, setting forth the WQS and beneficial uses for San Francisco Bay and its tributaries.

26 47. The Beneficial Uses for San Francisco Bay are: industrial service supply, shellfish  
27 harvesting, fish migration, preservation of rare and endangered species, fish spawning, commercial and  
28 sportfishing, estuarine habitat, wildlife habitat, recreational activities involving contact with water,



1 recreational activities involving proximity to water, and navigation. *See* Basin Plan, Table 2-1.

2 48. Surface waters that cannot support the Beneficial Uses of those waters listed in the Basin  
3 Plans are designated as impaired water bodies pursuant to Section 303(d) of the Clean Water Act, 33  
4 U.S.C. § 1313(d).

5 49. According to the 2012 303(d) List of Impaired Water Bodies, Islais Creek is impaired for  
6 ammonia, chlordane, dieldrin, hydrogen sulfide, PAHs, and sediment toxicity.

7 50. Polluted discharges from industrial sites, such as the Facility, contribute to the  
8 degradation of these already impaired surface waters and aquatic-dependent wildlife.

9 51. Discharges of pollutants at levels above WQS contribute to the impairment of the  
10 Beneficial Uses of the waters receiving the discharges.

11 52. WQS applicable to dischargers covered by the Storm Water Permit include, but are not  
12 limited to, those set out in the Basin Plan and in the Criteria for Priority Toxic Pollutants for the State of  
13 California (“CTR”), 40 C.F.R. § 131.38.

14 53. The Basin Plan sets forth, among other things, narrative WQS for floating material,  
15 O&G, sediment, settleable matter, and suspended materials, and sets forth numeric WQS for pH,  
16 arsenic, cadmium, chromium VI, copper, cyanide, lead, mercury, nickel, selenium, silver, tributyltin,  
17 zinc, and PAHs. *See* Basin Plan §§ 3.3.6, 3.3.7, 3.3.9, 3.3.12-3.3.14, 3.3.21, and Table 3-3.

18 54. The Basin Plan also includes site specific objectives (“SSOs”), which are WQS for  
19 specific sites, for certain pollutants of concern, including copper and nickel. *See* Basin Plan, Table 3-3A.

20 55. The CTR includes numeric criteria set to protect human health and the environment in the  
21 State of California. Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic  
22 Pollutants for the State of California Factsheet, EPA-823-00-008 (April 2000), available at:  
23 <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1007BKN.PDF?Dockkey=P1007BKN.PDF>.

24 56. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan standards,  
25 and/or other applicable WQS are violations of Receiving Water Limitation C(2) of the 1997 Permit and  
26 Section VI(A) of the 2015 Permit.

27 ///

28 ///

**D. The Storm Water Permit Storm Water Pollution Prevention Plan Requirements.**

57. Dischargers must develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit, Section A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water and authorized non-storm water discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

58. The SWPPP must include: a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of storm water management practices; a description of the BMPs to be implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and a description of individuals and their current responsibilities for developing and implementing the SWPPP. 1997 Permit, Section A(1)-(10); 2015 Permit, Section X.

59. The objectives of the SWPPP are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, to identify and implement site-specific BMPs to prevent the exposure of pollutants to storm water, and to reduce or prevent the discharge of polluted storm water from an industrial Facility. 1997 Permit, Section A(2); 2015 Permit, Section X.

60. The Storm Water Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Section A(9); 2015 Permit, Section X(A)(9). The Storm Water Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Section XV.

61. Section A(9)(d) of the 1997 Permit requires that the discharger submit an evaluation report that includes an identification of personnel performing the evaluation, the date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for implementing SWPPP revisions, any incidents of non-compliance and the corrective actions taken, and a certification that the discharger is in compliance with the Storm Water Permit. 1997 Permit, Section A(9)(d)(i)-(vi). If certification of compliance cannot be provided, the discharger must explain in the evaluation report why the facility is not in compliance with the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be submitted as part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

62. The SWPPP and site maps must be assessed annually and revised as necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4); 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

#### **E. The Storm Water Permit Monitoring and Reporting Requirements.**

63. The 1997 Permit required facility operators to develop and implement a monitoring and reporting program (“M&RP”) when industrial activities begin at a facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit requires implementation of an M&RP. 2015 Permit, Sections X(I) and XI.

64. The M&RP must ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *See* 1997 Permit, Section B(2). The M&RP must ensure that practices at the facility to prevent or

1 reduce pollutants in storm water and authorized non-storm water discharges are evaluated and revised to  
2 meet changing conditions at the facility, including revision of the SWPPP. *Id.*

3 65. The 2015 Permit requires facility operators to monitor and sample storm water discharges  
4 to ensure that the facility is complying with the terms of the 2015 Permit. 2015 Permit, Sections I(J)  
5 (Findings 55-56) and XI.

6 66. The objectives of the M&RP are to ensure that BMPs have been adequately developed  
7 and implemented, revised if necessary, and to ensure that storm water and non-storm water discharges  
8 are in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and  
9 Receiving Water Limitations. 1997 Permit, Sections B(2)(a) and B(2)(b); 2015 Permit, Sections X(I)  
10 and XI.

11 67. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit require that  
12 the M&RP shall be revised as necessary to ensure compliance with the Storm Water Permit.

13 68. Section B(4)(a) of the 1997 Permit and Section XI(A) of the 2015 Permit require  
14 dischargers to conduct monthly visual observations of storm water discharges.

15 69. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit require  
16 dischargers to document the presence of any floating and suspended materials, oil and grease,  
17 discolorations, turbidity, or odor in the discharge, and the source of any pollutants in storm water  
18 discharges from the facility. Dischargers are required to maintain records of observations, observation  
19 dates, discharge locations observed, and responses taken to reduce or prevent pollutants from contacting  
20 storm water discharges. *See* 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3).

21 70. The Storm Water Permit also requires dischargers to revise the SWPPP as necessary to  
22 ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. 1997 Permit,  
23 Section B(4)(c); 2015 Permit, Section X(B)(1).

24 71. The Storm Water Permit requires dischargers to visually observe and collect samples of  
25 storm water discharges from all locations where storm water is discharged. 1997 Permit, Sections B(5)  
26 and B(7); 2015 Permit Section XI(B)(4).

27 72. Section B(5)(a) of the 1997 Permit required dischargers to collect storm water samples  
28 during the first hour of discharge from the first storm event of the Wet Season and at least one other

1 storm event during the Wet Season. All storm water discharge locations must be sampled. Facility  
2 operators that do not collect samples from the first storm event of the Wet Season are still required to  
3 collect samples from two other storm events during the Wet Season and must explain in the Annual  
4 Report why the first storm event was not sampled.

5 73. Section B(15) of the 1997 Permit required dischargers participating in a group monitoring  
6 plan to collect at least two (2) samples from each discharge point at the Facility over a five (5) year  
7 period. *See* 1997 Permit, Sections B(5), B(7), and B(15).

8 74. Section XI(B)(2) of the 2015 Permit requires dischargers not participating in a  
9 compliance group to collect and analyze storm water samples from two (2) Qualifying Storm Events  
10 (“QSEs”) within the first half of each reporting year (July 1 to December 31) and two (2) QSEs within  
11 the second half of each reporting year (January 1 to June 30).

12 75. The Facility was part of the Port of San Francisco and Tenants group monitoring  
13 program, and thus the Facility Owner and/or Operator was required to comply with the group  
14 monitoring provisions set forth in Section B(15) of the 1997 Permit

15 76. The Facility is no longer part of a group monitoring program and must comply with the  
16 individual sampling requirements of Section XI(B)(2) of the 2015 Permit.

17 77. Section B(5)(b) required that sampling conducted pursuant to the 1997 Permit occur  
18 during scheduled facility operating hours that are preceded by at least three (3) working days without  
19 storm water discharge.

20 78. Section XI(B)(1) of the 2015 Permit requires sampling during QSEs, defined as a  
21 precipitation event that produces a discharge for at least one drainage area, and it is preceded by forty-  
22 eight (48) hours with no discharge from any drainage area.

23 79. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that  
24 permittees must submit all sampling and analytical results for all samples via Storm Water Multiple  
25 Application & Report Tracking System (“SMARTS”) within thirty (30) days of obtaining all results for  
26 each sampling event.

27 80. Section B(5)(c)(i) of the 1997 Permit required dischargers to analyze each sample for pH,  
28 specific conductance (“SC”), TSS, and total organic carbon (“TOC”). A discharger was permitted to

1 substitute analysis for O&G instead of TOC.

2 81. Section B(5)(c)(ii) of the 1997 Permit required dischargers to analyze each sample for  
3 toxic chemicals and other pollutants likely to be present in significant quantities in the storm water  
4 discharged from the facility.

5 82. Section B(5)(c)(iii) and Table D of the 1997 Permit and Table 1 of the 2015 Permit  
6 require Facility classified as Standard Industrial Classification (“SIC”) code 207X (Fats and Oils) such  
7 as the Facility, to also analyze storm water samples for BOD, COD and N+N, as well as other  
8 parameters required by the Regional Board.

9 83. Section XI(B)(6)(a)-(b) of the 2015 Permit requires dischargers to analyze samples for  
10 TSS, O&G, and pH.

11 84. Section XI(B)(6)(c) of the 2015 Permit requires dischargers to analyze samples for  
12 pollutants associated with industrial operations.

13 85. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water  
14 samples for additional applicable industrial parameters related to receiving waters with 303(d) listed  
15 impairments, or approved Total Maximum Daily Loads.

16 86. Section B(14) of the 1997 Permit required that dischargers submit an Annual Report to  
17 the applicable Regional Board by July 1 of each year. The Annual Report must include a summary of  
18 visual observations and sampling results, an evaluation of the visual observations and sampling and  
19 analysis results, laboratory reports, the annual comprehensive site compliance evaluation report  
20 specified in Section A(9), an explanation of why a facility did not implement any activities required, and  
21 the records specified in Section B(13)(i).

22 87. Section XVI of the 2015 Permit requires dischargers to submit an Annual Report with a  
23 Compliance Checklist that indicates whether a discharger complies with, and has addressed all  
24 applicable requirements of the 2015 Permit, an explanation for any non-compliance of requirements  
25 within the reporting year, as indicated in the Compliance Checklist, an identification, including page  
26 numbers and/or Sections, of all revisions made to the SWPPP within the reporting year, and the date(s)  
27 of the Annual Evaluation.

28 ///

**F. The 2015 Permit Exceedance Response Actions Requirements.**

88. When the 2015 Permit became effective on July 1, 2015, all permittees were in “Baseline status.” *See* 2015 Permit, Section XII(B). A permittee’s Baseline status for any given parameter changes to “Level 1 status” if sampling results indicate a Numeric Action Level (“NAL”) exceedance for that same parameter. *See* 2015 Permit, Section XII(C).

89. Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. *See* 2015 Permit, Section XII(C). By October 1 following commencement of Level 1 status, permittees are required to: complete an evaluation, with the assistance of a Qualified Industrial Stormwater Practitioner (“QISP”), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of Storm Water Permit. *See* 2015 Permit, Section XII(C)(1)(a)-(c).

90. Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated. *See* 2015 Permit, Section XII(C)(1)(c).

91. Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 Exceedance Response Action (“ERA”) Report prepared by a QISP that includes the a summary of the Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *See* 2015 Permit, Section XII(C)(2)(a)(i)-(ii).

92. The permittee in Level 1 status must also certify and submit via SMARTS the QISP’s identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *See* 2015 Permit, Section XII(C)(2)(a)(iii).

93. A permittee’s Level 1 status for a parameter will return to Baseline status once a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *See* 2015 Permit, Section XII(C)(2)(b).



**C. The Pretreatment Ordinance.**

94. Indirect dischargers are those dischargers whose wastewater passes through publicly owned treatment works (“POTWs”). *See Nat’l Assoc. of Metal Finishers v. EPA*, 719 F.2d 624, 633 (3d Cir. 1983).

95. Congress regulated these dischargers in recognition that “the pollutants which some indirect dischargers release into POTWs could interfere with the operation of the POTWs, or could pass through the POTWs without adequate treatment.” *Nat’l Assoc. of Metal Finishers*, 719 F.2d at 633.

96. Indirect dischargers are required to comply with pretreatment standards promulgated by EPA under section 307 of the Clean Water Act and pretreatment standards promulgated by local POTWs. *Chem. Mfrs. Assoc. v. Natural Res. Def. Council*, 470 U.S. 116, 119 (1985); 40 C.F.R. § 403.8.

97. CWA section 307(d), 33 U.S.C. § 1317(d), prohibits the operation of facilities subject to pretreatment effluent limitations in violation of those standards.

98. Pretreatment standards are meant to “prevent the discharge of any pollutant through [the POTW], which pollutant interferes with, passes through or otherwise is incompatible with such works,” and are enforceable effluent limitations. 33 U.S.C. § 1317(b)(1); *Sierra Club v. Union Oil Co.*, 813 F.2d 1480, 1482 (9th Cir. 1987).

99. Pretreatment standards establish numeric limits on discharges by specific categories of industrial sources. *Nat’l Assoc. of Metal Finishers*, 719 F.2d at 634; 40 C.F.R. § 403.6.

100. The Pretreatment Ordinance establishes the PUC’s pretreatment program, including permit application requirements, permit requirements, local limits and prohibitions for pollutant discharges into its POTW, and monitoring and reporting requirements, as required by the Clean Water Act. 40 C.F.R. § 403.8; *Pub. Interest Research Group v. Ferro Merch. Equip. Corp.*, 1988 U.S. Dist. LEXIS 17413, at \*5-6 (D.N.J. Nov. 15, 1988) (“Pursuant to the federal regulations, POTW’s can establish their own local limits for pollutant discharges which replace the federal standards as long as they are more stringent 40 C.F.R. § 403.4.”); *see also* Pretreatment Ordinance §§ 118, 123, 124, 125, 127.

101. Indirect dischargers such as Darling are required to comply with the terms of the Pretreatment Ordinance. 40 C.F.R. § 403.4; *Ferro Merch. Equip. Corp.*, 1988 U.S. Dist. LEXIS 17413,

at \*5; *Inland Empire Waterkeeper v. Uniweb, Inc.*, 2008 U.S. Dist. LEXIS 75585, at \*4-5 (C.D. Cal. Aug. 6, 2008).

102. Based on EPA's Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy, polluted storm water and commingled wastewater discharged into San Francisco's combined sewer system from industrial facilities such as Defendant's can, and does, discharge directly into surface waters as combined sewer overflows ("CSOs"). CSOs are untreated, or only partially treated, discharges of human waste and pollutants discharged by commercial and industrial establishments, and are major sources of water pollution. Discharges of CSOs into San Francisco Bay and its tributaries are known to cause adverse human health effects (e.g., gastrointestinal illness), beach closures, shellfish bed closures, toxicity for aquatic life, and aesthetic impairment. Organic compounds, metals, oil, grease, and toxic pollutants, among other pollutants of concern, contained in CSOs harm aquatic life, have adverse public health effects, and cause fishing and shellfishing restrictions. BOD in CSOs results in reduced oxygen levels and fish kills. As part of San Francisco's combined sewer system, there are several outfalls designed to discharge CSOs into Islais Creek, which is part of the system's "Central Basin."

#### **D. The Pretreatment Permits.**

103. In San Francisco, any person who discharges wastewater into the POTW must comply with the Pretreatment Ordinance and a pretreatment permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1317; 40 C.F.R. § 403.8; *see also* Pretreatment Ordinance §§ 118, 123, 124, 125, 127.

104. Indirect discharger pretreatment permits establish effluent limits, as well as self-monitoring, sampling, reporting, notification, and recordkeeping requirements. *Id.* (citing 40 C.F.R. § 403.8(f)(1)).

105. Indirect dischargers must monitor and report the concentration of each discharged regulated pollutant. *Int'l Union v. Amerace Corp.*, 740 F. Supp. 1072, 1079 (D.N.J. 1990) (citing 40 C.F.R. § 403.12(e)(1)).

106. Pursuant to the Pretreatment Ordinance, Darling obtained permits to discharge industrial wastewater and storm water into the POTW in 2010, 2013, and 2016.

1           107. Between June 17, 2010, and June 17, 2013, the Pretreatment Permit in effect for the  
2 Facility was Permit No. 10-06513, which Baykeeper refers to as the “2010 Permit.”

3           108. Between June 17, 2013, and June 16, 2016, the Pretreatment Permit in effect for the  
4 Facility was Permit No. 13-06983, which Baykeeper refers to as the “2013 Permit.”

5           109. Between June 17, 2016, and June 16, 2019, the Pretreatment Permit in effect for the  
6 Facility is Permit No. 16-06568, which Baykeeper refers to as the “2016 Permit.”

7           110. On April 21, 2017, the 2016 Permit was amended, which Baykeeper refers to as the  
8 “Amended 2016 Permit.”

9           111. Plaintiff is informed and believes, and thereon alleges, that Defendant submitted an  
10 application in support of the 2010 Permit, which is dated May 24, 2010.

11           112. Plaintiff is informed and believes, and thereon alleges, that Defendant’s application  
12 submitted in support of the 2010 Permit does not include information required by the Pretreatment  
13 Ordinance, including but not limited to information indicating that the Facility is regulated by the Storm  
14 Water Permit.

15           113. Plaintiff is informed and believes, and thereon alleges, that Defendant submitted an  
16 application in support of the 2013 Permit, which is dated May 24, 2010.

17           114. Plaintiff is informed and believes, and thereon alleges, that Defendant’s application  
18 submitted in support of the 2013 Permit does not include information required by the Pretreatment  
19 Ordinance, including but not limited to information indicating that the Facility is regulated by the Storm  
20 Water Permit and a current certification.

21           115. Plaintiff is informed and believes, and thereon alleges, that Defendant submitted an  
22 application in support of the 2016 Permit, which is dated April 8, 2016.

23           116. Plaintiff is informed and believes, and thereon alleges, that Defendant’s application  
24 submitted in support of the 2016 Permit, does not include information required by the Pretreatment  
25 Ordinance, including but not limited to information indicating that the Facility is regulated by the Storm  
26 Water Permit, information describing proposed wastewater and/or sludge treatment processes, and  
27 information adequately identifying the chemicals contained in wastewater discharges from the Facility.

28           117. Plaintiff is informed and believes, and thereon alleges, that Defendant did not submit an

1 application in support of the Amended 2016 Permit.

2 118. Baykeeper refers to the 2010 Permit, the 2013 Permit, the 2016 Permit, and the Amended  
3 2016 Permit collectively as the “Pretreatment Permits.”

4 119. Though the 2010 Permit and the 2013 Permit have expired, and though the 2016 Permit  
5 was amended, Darling is liable for violations of those permits and its ongoing violations of the Amended  
6 2016 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard*  
7 *Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit);  
8 *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean  
9 Water Act’s legislative intent and public policy favor allowing penalties for violations of an expired  
10 permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J.  
11 1988) (“Limitations of an expired permit, when those limitations have been transferred unchanged to the  
12 newly issued permit, may be viewed as currently in effect.”); *Cal. Sportfishing Prot. Alliance v. River*  
13 *City Waste Recyclers, LLC*, 2016 U.S. Dist. LEXIS 120186, at \*12-13, \*44 (E.D. Cal. Sept. 6, 2016).

14 120. Part I.B. of the Pretreatment Permits establish numeric effluent limits that wastewater  
15 discharges from the Facility shall not exceed.

16 121. Part I.B.1. of the Pretreatment Permits require that, based on any grab sample of  
17 wastewater discharges from the Facility, wastewater discharges from the Facility shall not exceed the  
18 following numerical effluent limitations: pH, 6.0 SU min to 9.5 SU max; Dissolved sulfides, 0.5 mg/L;  
19 Temperature (except where higher temperatures are required by law), 125°F (52°C); and Hydrocarbon  
20 oil and grease, 100 mg/L.

21 122. Part I.B.2. of the Pretreatment Permits require that, based on grab samples of wastewater  
22 discharges from the Facility averaged over a production week, wastewater discharges from the Facility  
23 shall not exceed the following numerical effluent limitations: Total recoverable oil and grease, 300  
24 mg/L.

25 123. Part I.C.1. of the Pretreatment Permits requires that, based on 24-hour composite  
26 sampling of wastewater discharges from the Facility, wastewater discharges from the Facility shall not  
27 exceed the following numerical limits: Arsenic, 4.0 mg/L; Cadmium, 0.5 mg/L; Chromium, 5.0 mg/L;  
28 Copper, 4.0 mg/L; Lead, 1.5 mg/L; Mercury, 0.05 mg/L; Nickel, 2.0 mg/L; Silver, 0.6 mg/L; and Zinc,

1 7.0 mg/L.

2 124. Part I.C.2. of the Pretreatment Permits requires that, based on any graph sample of  
3 wastewater discharges from the Facility, wastewater discharges from the Facility shall not exceed the  
4 following numerical limits: Cyanide, 1.0 mg/L; and Phenols, 23.0 mg/L.

5 125. Parts I.D. through I.K. of the Pretreatment Permits establish wastewater prohibitions that  
6 require the Facility Owner and/or Operator to prevent certain types of wastewater discharges into the  
7 POTW.

8 126. Part I.E.2. of the Pretreatment Permits prohibit the discharge of pollutants from the  
9 Facility into the POTW that will cause corrosive structural damage to the sewerage system, but in no  
10 case discharges with pH lower than 5.0 SU.

11 127. Part I.G. of the Pretreatment Permits prohibits the Facility Owner and/or Operator from  
12 increasing the use of process water or, in any other way, attempting to dilute a discharge of wastewater  
13 as partial or complete substitute for adequate treatment to achieve compliance with the requirements of  
14 the Pretreatment Ordinance.

15 128. Part II of the Pretreatment Permits establishes monitoring requirements the Facility  
16 Owner and/or Operator must conduct to determine compliance with the Pretreatment Permits.

17 129. Unless the PUC performs the compliance monitoring in lieu of the Facility Owner and/or  
18 Operator, Part II.A. of the 2010 Permit, the 2013 Permit, and the 2016 Permit require that the Facility  
19 Owner and/or Operator perform self-monitoring at the sampling box located at the northerly entrance to  
20 the Facility at least once every six (6) months.

21 130. Unless the PUC performs the compliance monitoring in lieu of the Facility Owner and/or  
22 Operator, Part II.A. of the 2010 Permit, the 2013 Permit, the 2016 Permit, and the Amended 2016  
23 Permit require that the Facility Owner and/or Operator perform self-monitoring at the Terminal  
24 Collection Pit at least once every six (6) months.

25 131. Wastewater samples at the Facility are to be collected as one (1) sample per day for five  
26 (5) workdays for each listed pollutant, and must be representative of the Facility's wastewater  
27 discharges. The pollutants listed in Part II.A. of the 2010 Permit, the 2013 Permit, and the 2016 Permit  
28 are as follows: pH, Total recoverable oil and grease, Arsenic, Cadmium, Chromium, Copper, Lead,

Mercury, Nickel, Silver, and Zinc.

132. The pollutants listed in Part II.A. of the Amended 2016 Permit are as follows: pH, Total recoverable oil and grease, Dissolved Sulfide, Total Suspended Solids, Chemical Oxygen Demand, Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Silver, and Zinc.

133. The Facility Owner and/or Operator is required to store all hazardous materials and hazardous wastes within a bermed area or by using some other method of secondary containment to prevent spills from entering the combined sewer system. *See* 2010 Permit, Part II.G; 2013 Permit, Part II.H; 2016 Permit, Part II.H; Amended 2016 Permit, Part II.H.

134. The Facility Owner and/or Operator is required to develop and implement a plan to control slug discharges. *See* 2010 Permit, Part II.I; 2013 Permit, Part II.J; 2016 Permit, Part II.J; Amended 2016 Permit, Part II.J. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge which has a reasonable potential to cause interference or pass through, or in any other way violate the Pretreatment Ordinance or the Pretreatment Permits. The slug control plan must contain, at a minimum: (1) a description of discharge practices, including non-routine batch discharges; (2) a description of stored chemicals; (3) procedures for immediately notifying the PUC of slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. § 403.5(b), with procedures for follow-up written notifications within five days; and (4) if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

135. Part III of the Pretreatment Permits establishes reporting requirements. All reports must be signed by an authorized representative of the Facility Owner and/or Operator and must be submitted under penalty of perjury. *See* Pretreatment Permits, Part III.I. Within thirty (30) days of the effective date of the Pretreatment Permits the Facility Owner and/or Operator must: develop and submit (unless previously submitted) to the PUC: (1) a manual (or self-developed set of instructions) on the proper operation and maintenance of any wastewater treatment system used at the Facility; (2) a drawing

showing a flow diagram and the components of the wastewater treatment system; and (3) any required information which has not been submitted in the permittee's wastewater permit application; complete and submit (unless previously submitted) to the PUC a checklist for a Spill Prevention Control and Countermeasures plan, showing facilities and operating procedures to provide protection against spills or accidental discharges of prohibited or regulated materials; and complete and submit (unless previously submitted) to the PUC a checklist for hazardous waste reduction assessment of the Facility. *See* Pretreatment Permits, Part III.A., Part III.B., Part III.C. In addition, Part III.D. of the Pretreatment Permits requires that within thirty (30) days of the effective date of the Pretreatment Permits the Facility Owner and/or Operator complete and submit (unless previously submitted) to the PUC a checklist for a storm water pollution prevention plan for the Facility.

136. Part III.E. of the Pretreatment Permits requires that the Facility Owner and/or Operator submit semi-annual reports on or before August 1 and February 1 annually. The semi-annual reports must cover the periods January 1 to June 30 and July 1 to December 31, respectively, and must include: (1) average and maximum daily flow rates in gallons per day measured or estimated over the six-month reporting period of the industrial wastewater discharges; (2) copies of all analytical results obtained from any voluntary or required self-monitoring, or from split samples provided by the PUC of its industrial wastewater discharges along with chain-of-custody forms; (3) copies of any uniform hazardous waste manifests and/or other documentation resulting from the shipment off-site of wastes generated in connection with production of wastewater treatment processes at the Facility; (4) a description of any violations of the Pretreatment Ordinance and remedial measures undertaken by the Facility Owner and/or Operator; and (5) a description of any process changes or treatment system alterations.

**E. Clean Water Act Citizen Suit Provision and Remedies.**

137. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for citizen enforcement actions against any "person" who is alleged to be in violation of an "effluent standard or limitation . . . or an order issued by the Administrator or a State with respect to such a standard or limitation." *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

138. Defendant is a "person" within the meaning of Section 502(5) of the Clean Water Act. *See* 33 U.S.C. § 1362(5).



1           139. An action for injunctive relief is authorized under Section 505(a) of the Clean Water Act.  
2 *See* 33 U.S.C. § 1365(a).

3           140. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to  
4 \$37,500 per day, pursuant to Sections 309(d) and 505 of the CWA occurring after between January 12,  
5 2009 and November 1, 2015, and \$51,570 per day per violation for all violations that occurred after  
6 November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); Adjustment of Civil Monetary Penalties for  
7 Inflation, 40 C.F.R. § 19.4.

8           141. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or  
9 substantially prevailing parties to recover litigation costs, including attorneys' fees, experts' fees, and  
10 consultants' fees.

#### 11 **IV. FACTUAL BACKGROUND**

##### 12 **A. Description of Industrial Activities at the Facility.**

13           142. Plaintiff is informed and believes, and thereon alleges, that industrial activities at the  
14 Facility generally include, but are not limited to, the processing plant; meat and bone meal silos and  
15 loading area; grease traps wash tanks area; temporary vehicle parking areas; miscellaneous outdoor  
16 storage areas; treatment chemicals storage area; raw materials unloading area; cooking oil tank farm;  
17 vehicle and equipment maintenance area; vehicle wash area; vehicle fueling area; tallow tank farm area;  
18 and the tallow loading and unloading area.

19           143. The Facility is self-categorized under SIC Code 2077, Animal and Marine Fats and Oils.

20           144. Facilities that fall under SIC Code 207X are required to analyze storm water samples for  
21 the following parameters: TSS, pH, O&G, BOD, COD, and N+N.

##### 22 **B. Description of the Pretreatment System at the Facility.**

23           145. Plaintiff is informed and believes, and thereon alleges, that from at least October 2009 to  
24 April 2017, the pretreatment system at the "Main Plant" portion of the Facility consisted of a flow  
25 equalization basin, a dissolved air flotation, and a contact chamber.

26           146. Plaintiff is informed and believes, and thereon alleges, that from at least October 2009  
27 to February 2017, the wastewater from the "Terminal Collection Pit" portion of the Facility was not  
28 subject to pretreatment.

1           147. Plaintiff is informed and believes, and thereon alleges, that as of April 2017, as described  
2 in Defendant's "Wastewater Pretreatment System Operations & Maintenance Manual" the pretreatment  
3 system for all wastewater discharges from the Facility consists of: flow equalization basin #1, transfer  
4 pump #1, rotary drum screen, transfer pump #2, flow equalization basin #2, dissolved air flotation feed  
5 pump, dissolved air flotation system, chemical feed systems, and PLC control system.

6           148. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
7 Pretreatment System Operations & Maintenance Manual" does not include design calculations for the  
8 Facility's pretreatment system.

9           149. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
10 Pretreatment System Operations & Maintenance Manual" does not include maximum and average  
11 design flows.

12           150. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
13 Pretreatment System Operations & Maintenance Manual" does not identify maximum and average  
14 wastewater loadings at the Facility.

15           151. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
16 Pretreatment System Operations & Maintenance Manual" does not identify how Defendant determined  
17 coagulant doses and how coagulant doses will be monitored for effectiveness.

18           152. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
19 Pretreatment System Operations & Maintenance Manual" does not require Defendant to shut down or  
20 reduce production if failure or overloading of the treatment units prevents compliance with the  
21 Pretreatment Permits.

22           153. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
23 Operator has failed and continues to fail to implement adequate secondary containment at the Facility.

24           **C. Defendant's SWPPPs and M&RPs for the Facility.**

25           154. The SWPPP and M&RP publicly available for the Facility via the SMARTS database is  
26 dated January 30, 2017.

27           155. Plaintiff is informed and believes, and thereon alleges, that the SWPPP and M&RP  
28 referenced in paragraph 154 is the current SWPPP and M&RP for the Facility. Plaintiff refers to the

1 SWPPP and M&RP jointly as the “Facility SWPPP.”

2 **D. Industrial Activities, Storm Water Pollutant Sources, Storm Water Pollutants, and**  
3 **BMPs at the Facility.**

4 156. Plaintiff is informed and believes, and thereon alleges, that the industrial activities and  
5 areas of industrial activity are pollutant sources at the Facility.

6 157. Plaintiff is informed and believes, and thereon alleges, that the SWPPPs for the Facility  
7 do not include all areas of industrial activity at the Facility.

8 158. Plaintiff is informed and believes, and thereon alleges, that the SWPPPs for the Facility  
9 do not adequately describe all industrial processes at the Facility.

10 159. Plaintiff is informed and believes, and thereon alleges, that the Facility site map does not  
11 include locations and descriptions of structural control measures that affect industrial storm water  
12 discharges at the Facility.

13 160. Plaintiff is informed and believes, and thereon alleges, that the Facility site map does not  
14 identify locations where materials are directly exposed to precipitation at the Facility.

15 161. Plaintiff is informed and believes, and thereon alleges, that the Facility site map does not  
16 include notes, legends, and other data appropriate to ensure the site map is clear, legible, and  
17 understandable.

18 162. Plaintiff is informed and believes, and thereon alleges, that industrial activities occur  
19 throughout the Facility outdoors without adequate BMPs to prevent storm water exposure to pollutant  
20 sources.

21 163. Plaintiff is informed and believes, and thereon alleges, that industrial activities occur  
22 throughout the Facility outdoors without adequate treatment measures to prevent polluted storm water  
23 from discharging from the Facility.

24 164. Plaintiff is informed and believes, and thereon alleges, that because the Facility SWPPP  
25 fails to describe all of the industrial activities, the Facility SWPPP also fails to describe all of the  
26 significant materials and processes that are related to the industrial activities at the Facility.

27 165. Plaintiff is informed and believes, and thereon alleges, that because all significant  
28 materials have not been identified, the Facility SWPPP fails to describe the locations where the materials

1 are stored, received, shipped, and handled, or the typical quantities and frequency of significant  
2 materials at the Facility.

3 166. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP fails to  
4 describe all of the pollutants associated with the industrial activities at the Facility.

5 167. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
6 Operator has failed and continues to fail to adequately assess pollutants associated with potential  
7 pollutant sources at the Facility.

8 168. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP does not  
9 include an adequate assessment of pollutants associated with potential pollutant sources at the Facility.

10 169. Plaintiff is informed and believes, and thereon alleges, that pollutants associated with  
11 industrial activities and areas the Facility include, but are not limited to: sediment, TSS; heavy metals,  
12 such as iron, copper, zinc, and aluminum; pH, COD, BOD, N+N, O&G, litter, antifreeze, diesel,  
13 transmission and hydraulic oil, motor oil, lubricants, and other pollutants.

14 170. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP fails to  
15 describe adequate BMPs to reduce or prevent pollutants in the discharges from the Facility.

16 171. Plaintiff is informed and believes, and thereon alleges, that without properly identifying  
17 all industrial activities at the Facility in the Facility SWPPP, the Facility Owner and/or Operator cannot  
18 and has not developed all appropriate BMPs.

19 172. Plaintiff is informed and believes, and thereon alleges, that without properly identifying  
20 all industrial activities at the Facility in the Facility SWPPP, the Facility Owner and/or Operator cannot  
21 and has not implemented all appropriate BMPs.

22 173. Plaintiff is informed and believes, and thereon alleges, that without properly identifying  
23 all significant materials at the Facility in the Facility SWPPP, the Facility Owner and/or Operator cannot  
24 and has not developed all appropriate BMPs.

25 174. Plaintiff is informed and believes, and thereon alleges, that without properly identifying  
26 all significant materials at the Facility in the SWPPP, the Facility Owner and/or Operator cannot and has  
27 not implemented all appropriate BMPs.

28 175. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP does not

1 include an adequate assessment of potential pollutant sources at the Facility.

2 176. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
3 Operator has failed and continues to fail to assess the BMPs at the Facility corresponding to potential  
4 pollutant sources and associated pollutants.

5 177. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP does not  
6 include an adequate assessment of the BMPs at the Facility corresponding to potential pollutant sources  
7 and associated pollutants.

8 178. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
9 Operator has failed and continues to fail to assess potential pollutant sources at the Facility.

10 179. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP does not  
11 include an adequate description of the BMPs at the Facility.

12 180. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
13 Operator has failed and continues to fail to analyze the effectiveness of the BMPs at the Facility.

14 181. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP does not  
15 include an adequate analysis of the effectiveness of the BMPs at the Facility.

16 182. Plaintiff is informed and believes, and thereon alleges, that storm water sampling at the  
17 Facility demonstrates that the storm water discharges from the Facility contain concentrations of  
18 pollutants above EPA Benchmarks, including, but not limited to: aluminum, iron, pH, N+N, BOD,  
19 COD, TSS, and zinc.

20 183. Defendant's self-reported data for its storm water sample collected December 8, 2016,  
21 indicates exceedances of Benchmarks, NALs, and/or applicable Water Quality Standards for the  
22 following parameters: N+N, O&G, BOD, COD, and TSS.

23 184. Defendant's self-reported data for its storm water sample collected December 15, 2016,  
24 indicates exceedances of Benchmarks, NALs, and/or applicable Water Quality Standards for the  
25 following parameters: O&G, BOD, COD, and TSS.

26 185. Defendant's self-reported data for its storm water sample collected March 20, 2017,  
27 indicates exceedances of Benchmarks, NALs, and/or applicable Water Quality Standards for the  
28 following parameters: O&G, BOD, COD, and TSS.

1 186. Defendant's self-reported data for its storm water sample collected March 24, 2017,  
2 indicates exceedances of Benchmarks, NALs, and/or applicable Water Quality Standards for the  
3 following parameters: O&G, BOD, COD, and TSS.

4 187. Plaintiff is informed and believes, and thereon alleges, that the ongoing, repeated and  
5 significant exceedances of EPA Benchmarks demonstrate that the Facility Owner and/or Operator failed  
6 and continues to fail to develop BMPs to prevent the exposure of pollutants to storm water, and to  
7 prevent discharges of polluted storm water from the Facility.

8 188. Plaintiff is informed and believes, and thereon alleges, that the ongoing, repeated and  
9 significant exceedances of EPA Benchmarks demonstrate that the Facility Owner and/or Operator failed  
10 and continues to fail to implement BMPs to prevent the exposure of pollutants to storm water, and to  
11 prevent discharges of polluted storm water from the Facility.

12 189. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
13 Operator has failed and continues to fail to adequately revise the Facility SWPPP.

14 **E. Storm Water and Wastewater Discharge Locations at the Facility.**

15 190. Plaintiff is informed and believes, and thereon alleges, that storm water in the central part  
16 of the Facility is collected, treated in the on-site wastewater treatment system, and discharged to the City  
17 of San Francisco's combined sewer system.

18 191. Plaintiff is informed and believes, and thereon alleges, that storm water in the western  
19 part of the Facility flows directly to the City of San Francisco's combined sewer system.

20 192. Plaintiff is informed and believes, and thereon alleges, that storm water in the northeast  
21 corner of the Facility flows to two (2) storm water inlets at Amador Street, which discharge to an outfall  
22 at Islais Creek Channel, approximately 500 feet northwest of the Facility.

23 193. Plaintiff is informed and believes, and thereon alleges, that storm water from a localized  
24 area in the southwestern part of the Facility enters a storm drain inlet and discharges directly to Islais  
25 Creek.

26 194. Plaintiff is informed and believes, and thereon alleges, that wastewater from the Facility  
27 is discharged into the combined sanitary sewer at the side sewers on Amador Street.

28 195. Plaintiff is informed and believes, and thereon alleges, that between October 2009 and

February 2017, storm water could and/or did commingle with the Facility's wastewater before the mixed discharges entered the pretreatment system at the Facility.

196. Plaintiff is informed and believes, and thereon alleges, that after February 2017, storm water can and/or does commingle with the Facility's wastewater before the mixed discharges enter the pretreatment system at the Facility.

197. Plaintiff is informed and believes, and thereon alleges, that a "Darling Wastewater Flowchart" dated April 2016 did not indicate whether wastewater and storm water that entered the terminal collection pit is subject to pretreatment prior to discharging to the sanitary sewer.

198. Plaintiff is informed and believes, and thereon alleges, that the average wastewater discharges in 2016 were 70,000 gallons per day.

199. Plaintiff is informed and believes, and thereon alleges, that from at least October 2009 to February 2017 wastewater discharged, and/or could discharge, from the Facility from the "Main Plant" and the "Terminal Pit."

200. Plaintiff is informed and believes, and thereon alleges, that beginning February 2017 wastewater discharges from the Facility from the "Terminal Pit" only.

**F. Defendant's Storm Water Sampling, Monitoring, and Reporting.**

201. The Facility SWPPP includes the "Storm Water Monitoring Implementation Plan ("MIP")" for the Facility.

202. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to conduct all required quarterly and/or monthly visual observations of unauthorized discharges at the Facility.

203. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed to conduct, and/or provide the records required by the Storm Water Permit for, monthly visual observations of storm water discharges at the Facility.

204. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator fail to consistently analyze storm water discharges from the Facility for BOD, COD, and N+N.

205. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP fails to require that the Facility Owner and/or Operator analyze storm water discharges from the Facility for all



1 required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum,  
2 aluminum, copper, iron, and zinc.

3 206. Plaintiff is informed and believes, and thereon alleges, that the Facility SWPPP fails to  
4 require the Facility Owner and/or Operator collect storm water samples from all discharge locations at  
5 the Facility from all storm water discharges occurring during QSEs.

6 207. Defendant has submitted Annual Reports to the Regional Board for the 2011-2012, 2012-  
7 2013, 2013-2014, 2014-2015, and 2015-2016 reporting years. In each Annual Report, Defendant  
8 certified its full compliance with the Storm Water Permit.

9 2011-2012 Annual Report

10 208. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
11 Operator failed to indicate the location of non-storm water visual observations to document which  
12 drainage areas were observed in the 2011-2012 Annual Report for the Facility.

13 209. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
14 Operator failed to include the required evaluation of its quarterly visual observations of unauthorized  
15 non-storm water discharges for each of its drainage areas in the 2011-2012 Annual Report for the  
16 Facility.

17 210. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
18 Operator failed to include the required evaluation of its monthly visual observations of storm water  
19 discharges for each of its discharge points in the 2011-2012 Annual Report for the Facility.

20 211. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
21 Operator failed to include the required summary of the presence of any floating and suspended material,  
22 O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points in the  
23 2011-2012 Annual Report for the Facility.

24 212. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
25 Operator failed to include the required evaluation of the presence of any floating and suspended  
26 material, O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points  
27 in the 2011-2012 Annual Report for the Facility.

28 213. Plaintiff is informed and believes, and thereon alleges, that per the applicable group

1 monitoring plan during the 2011-2012 reporting year, and as reported in the 2011-2012 Annual Report,  
2 the Facility Owner and/or Operator was required to collect at least one (1) storm water sample at the  
3 Facility.

4 214. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
5 Operator failed to analyze all storm water samples collected for all required parameters, including  
6 pollutants likely to be present in the Facility storm water discharges in significant quantities, such as  
7 COD, BOD, and N+N, during the 2011-2012 reporting year.

8 215. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
9 Operator certified that the Facility was in compliance with the Storm Water Permit in its 2011-2012  
10 Annual Report.

11 216. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
12 Operator's certification of compliance in the 2011-2012 Annual Report was false because it failed to  
13 comply with each of the requirements of Section B(14) of the 1997 Permit.

14 217. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
15 Operator's certification of compliance in the 2011-2012 Annual Report was false because the Facility  
16 Owner and/or Operator had not revised the Facility SWPPP to achieve compliance with the Storm Water  
17 Permit.

18 218. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
19 Operator's certification of compliance in the 2011-2012 Annual Report was false because the Facility  
20 Owner and/or Operator had not revised the Facility M&RP to achieve compliance with the Storm Water  
21 Permit.

22 219. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
23 Operator failed to describe instances of noncompliance at the Facility with the Storm Water Permit in its  
24 2011-2012 Annual Report.

25 220. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
26 Operator failed to include descriptions of steps taken to prevent recurrence of its noncompliance with  
27 the Storm Water Permit in its 2011-2012 Annual Report for the Facility.

28 ///

2012-2013 Annual Report

221. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to indicate the location of non-storm water visual observations to document which drainage areas were observed in the 2012-2013 Annual Report for the Facility.

222. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include the required evaluation of its quarterly visual observations of unauthorized non-storm water discharges for each of its drainage areas in the 2012-2013 Annual Report for the Facility.

223. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include the required summary of its monthly visual observations of storm water discharges for each of its discharge points in the 2012-2013 Annual Report for the Facility.

224. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include the required evaluation of its monthly visual observations of storm water discharges for each of its discharge points in the 2012-2013 Annual Report for the Facility.

225. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include the required summary of the presence of any floating and suspended material, O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points in the 2012-2013 Annual Report for the Facility.

226. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include the required evaluation of the presence of any floating and suspended material, O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points in the 2012-2013 Annual Report.

227. Plaintiff is informed and believes, and thereon alleges, that during the 2012-2013 reporting year the Facility Owner and/or Operator failed to collect any storm water samples at the Facility, despite the occurrence of at least one (1) qualifying rain event in the 2012-2013 reporting year.

228. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator did not report any storm water samples in its 2012-2013 Annual Report for the Facility, despite the occurrence of at least one (1) qualifying rain event at the Facility in 2012-2013 reporting year.

1           229. Plaintiff is informed and believes, and thereon alleges, that per the applicable group  
2 monitoring plan during the 2012-2013 reporting year, and as reported in the 2012-2013 Annual Report,  
3 the Facility Owner and/or Operator was required to collect at least one (1) storm water sample at the  
4 Facility.

5           230. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
6 Operator certified that the Facility was in compliance with the Storm Water Permit in its 2012-2013  
7 Annual Report.

8           231. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
9 Operator's certification of compliance in the 2012-2013 Annual Report for the Facility was false  
10 because it failed to comply with each of the requirements of Section B(14) of the 1997 Permit.

11           232. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
12 Operator's certification of compliance in the 2012-2013 Annual Report for the Facility was false  
13 because the Facility Owner and/or Operator had not revised the Facility SWPPP to achieve compliance  
14 with the Storm Water Permit.

15           233. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
16 Operator's certification of compliance in the 2012-2013 Annual Report for the Facility was false  
17 because the Facility Owner and/or Operator had not revised the Facility M&RP to achieve compliance  
18 with the Storm Water Permit.

19           234. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
20 Operator failed to describe instances of noncompliance at the Facility with the Storm Water Permit in its  
21 2012-2013 Annual Report.

22           235. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
23 Operator failed to include descriptions of steps taken to prevent recurrence of its noncompliance with  
24 the Storm Water Permit in its 2012-2013 Annual Report for the Facility.

25           2013-2014 Annual Report

26           236. Plaintiff is informed and believes, and thereon alleges, that Facility Owner and/or  
27 Operator failed to include the required summary of its quarterly visual observations of unauthorized  
28 non-storm water discharges for each of its drainage areas in the 2013-2014 Annual Report.

1           237. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
2 Operator failed to include the required evaluation of its quarterly visual observations of unauthorized  
3 non-storm water discharges for each of its drainage areas in the 2013-2014 Annual Report.

4           238. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
5 Operator failed to indicate the location of non-storm water visual observations to document which  
6 drainage areas were observed in the 2013-2014 Annual Report.

7           239. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
8 Operator failed to include the required summary of its monthly visual observations of storm water  
9 discharges for each of its discharge points in the 2013-2014 Annual Report.

10          240. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
11 Operator failed to include the required evaluation of its monthly visual observations of storm water  
12 discharges for each of its discharge points in the 2013-2014 Annual Report.

13          241. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
14 Operator failed to include the required summary of the presence of any floating and suspended material,  
15 O&G, discolorations, turbidity, odor, and source of pollutants at observed discharge points in the 2013-  
16 2014 Annual Report.

17          242. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
18 Operator failed to include the required summary of the presence of any floating and suspended material,  
19 O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points in the  
20 2013-2014 Annual Report.

21          243. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
22 Operator failed to include the required evaluation of the presence of any floating and suspended  
23 material, O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points  
24 in the 2013-2014 Annual Report.

25          244. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
26 Operator certified that the Facility was in compliance with the Storm Water Permit in its 2013-2014  
27 Annual Report.

28          245. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or

1 Operator's certification of compliance in the 2013-2014 Annual Report for the Facility was false  
2 because it failed to comply with each of the requirements of Section B(14) of the 1997 Permit.

3 246. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
4 Operator's certification of compliance in the 2013-2014 Annual Report for the Facility was false  
5 because the Facility Owner and/or Operator had not revised the Facility SWPPP to achieve compliance  
6 with the Storm Water Permit.

7 247. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
8 Operator's certification of compliance in the 2013-2014 Annual Report for the Facility was false  
9 because the Facility Owner and/or Operator had not revised the Facility M&RP to achieve compliance  
10 with the Storm Water Permit.

11 248. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
12 Operator failed to describe instances of the Facility noncompliance with the Storm Water Permit in its  
13 2013-2014 Annual Report.

14 249. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
15 Operator failed to include descriptions of steps taken to prevent recurrence of its noncompliance with  
16 the Storm Water Permit in its 2013-2014 Annual Report.

17 2014-2015 Annual Report

18 250. Plaintiff is informed and believes, and thereon alleges, that Facility Owner and/or  
19 Operator failed to include the required summary of its quarterly visual observations of unauthorized  
20 non-storm water discharges for each of its drainage areas in the 2014-2015 Annual Report.

21 251. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
22 Operator failed to include the required evaluation of its quarterly visual observations of unauthorized  
23 non-storm water discharges for each of its drainage areas in the 2014-2015 Annual Report.

24 252. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
25 Operator failed to indicate the location of non-storm water visual observations to document which  
26 drainage areas were observed in the 2014-2015 Annual Report.

27 253. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
28 Operator failed to include the required summary of its monthly visual observations of storm water

1 discharges for each of its discharge points in the 2014-2015 Annual Report.

2       254. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
3 Operator failed to include the required evaluation of its monthly visual observations of storm water  
4 discharges for each of its discharge points in the 2014-2015 Annual Report.

5       255. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
6 Operator failed to include the required summary of the presence of any floating and suspended material,  
7 O&G, discolorations, turbidity, odor, and source of pollutants at observed discharge points in the 2014-  
8 2015 Annual Report.

9       256. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
10 Operator failed to include the required summary of the presence of any floating and suspended material,  
11 O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points in the  
12 2014-2015 Annual Report.

13       257. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
14 Operator failed to include the required evaluation of the presence of any floating and suspended  
15 material, O&G, discolorations, turbidity, odor, and source of pollutants at observed discharge points in  
16 the 2014-2015 Annual Report.

17       258. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
18 Operator failed to include the required evaluation of the presence of any floating and suspended  
19 material, O&G, discolorations, turbidity, odor, and source of pollutants at unobserved discharge points  
20 in the 2014-2015 Annual Report.

21       259. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
22 Operator certified that the Facility was in compliance with the Storm Water Permit in its 2014-2015  
23 Annual Report.

24       260. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
25 Operator's certification of compliance in the 2014-2015 Annual Report was false because it failed to  
26 comply with each of the requirements of Section B(14) of the 1997 Permit.

27       261. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
28 Operator's certification of compliance in the 2014-2015 Annual Report for the Facility was false



1 because the Facility Owner and/or Operator had not revised the Facility SWPPP to achieve compliance  
2 with the Storm Water Permit.

3 262. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
4 Operator's certification of compliance in the 2014-2015 Annual Report was false because the Facility  
5 Owner and/or Operator had not revised the Facility M&RPs to achieve compliance with the Storm  
6 Water Permit.

7 263. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
8 Operator failed to describe instances of noncompliance with the Storm Water Permit at the Facility in its  
9 2014-2015 Annual Report.

10 264. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
11 Operator failed to include descriptions of steps taken to prevent recurrence of its noncompliance with  
12 the Storm Water Permit in its 2014-2015 Annual Report.

13 2015-2016 Annual Report

14 265. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
15 Operator failed to analyze all storm water samples collected for all required parameters, including  
16 pollutants likely to be present in the Facility storm water discharges in significant quantities, such as  
17 aluminum, iron, copper, and zinc, during the 2015-2016 reporting year.

18 266. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
19 Operator certified that the Facility was in compliance with the Storm Water Permit in its 2015-2016  
20 Annual Report.

21 267. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
22 Operator's certification of compliance in the 2015-2016 Annual Report was false because it failed to  
23 comply with each of the requirements of Section XI of the 2015 Permit.

24 268. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
25 Operator's certification of compliance in the 2015-2016 Annual Report was false because the Facility  
26 Owner and/or Operator had not revised the Facility SWPPP to achieve compliance with the Storm Water  
27 Permit.

28 269. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or

Operator failed to describe instances of noncompliance with the Storm Water Permit at the Facility in its 2015-2016 Annual Report.

270. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence of its noncompliance with the Storm Water Permit in its 2015-2016 Annual Report.

2016-2017 Reporting Year

271. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator failed to analyze all storm water samples collected for all required parameters, including pollutants likely to be present in the Facility storm water discharges in significant quantities such as aluminum, iron, copper, and zinc, during the 2016-2017 reporting year.

**G. Defendant's Level 1 Exceedance Response Action Report.**

272. Based on Defendant's self-reported data from storm water samples collected during the 2015-2016 reporting year, as of July 1, 2016, Defendant is in Level 1 status for BOD, COD, and N+N.

273. The annual average for BOD during the 2015-2016 reporting year was 56.76 mg/L, 1.89 times the NAL; the annual average for COD during the 2015-2016 reporting year was 127.5 mg/L, 1.06 times the NAL; and the annual average for N+N during the 2015-2016 reporting year was 1.0838 mg/L, 1.59 times the NAL.

274. Defendant's Level 1 status evaluation and Level 1 ERA Report, prepared in December 2016, identified five additional/improved BMPs to be implemented at the Facility in Table 2-3.

275. Two out of five of the BMPs identified in Defendant's Level 1 ERA Report were scheduled for implementation by October 31, 2016 (cleaning storm water drainage areas more frequently or more effectively; and relocating parked trucks).

276. The remaining three BMPs identified in Defendant's Level 1 ERA Report were scheduled for implementation by December 31, 2016 (BMP training for non-employees; washing truck wheels; and cleaning equipment prior to storage).

277. Plaintiff is informed and believes, and thereon alleges, that Defendant's Level 1 status evaluation and Level 1 ERA Report only recommended improvements to minimum BMPs, and did not recommend advanced BMPs for the Facility's drainage areas which discharge storm water to Islais

1 Creek.

2 278. Plaintiff is informed and believes, and thereon alleges, that storm water discharges from  
3 the Facility have contained concentrations of pollutants above EPA Benchmarks, NALs, and/or WQS  
4 after December 31, 2016, including but not limited to in discharges from the Facility on March 20, 2017,  
5 and March 24, 2017.

6 **H. Defendant's Wastewater Sampling, Monitoring, and Reporting.**

7 279. Plaintiff is informed and believes, and thereon alleges, that from at least October 2009 to  
8 April 2017 Defendant did not collect samples from wastewater discharges from the Facility, with the  
9 exception of samples Defendant collected in November 2013.

10 280. Plaintiff is informed and believes, and thereon alleges, that Defendant's "Wastewater  
11 Pretreatment System Operations & Maintenance Manual" includes a section titled "Laboratory  
12 Controls" the purpose of which is described as, among other things, to "satisfy the discharge permit  
13 report requirements" and "enforce the Federal Clean Water Act."

14 281. Plaintiff is informed and believes, and thereon alleges, that the PUC has collected  
15 samples from the Facility's wastewater discharges to determine the sewer service charge rate for the  
16 Facility's water account.

17 282. Plaintiff is informed and believes, and thereon alleges, that the PUC did not collect  
18 samples of wastewater discharges in lieu of the Facility Owner and/or Operator, and the Facility Owner  
19 and/or Operator failed to collect any samples from the sampling box at least once every six (6) months  
20 and failed to analyze samples for all pollutants regulated by the Pretreatment Permits for at least the past  
21 five (5) years.

22 283. Plaintiff is informed and believes, and thereon alleges, that the PUC did not collect  
23 samples of wastewater discharges in lieu of the Facility Owner and/or Operator, and the Facility Owner  
24 and/or Operator failed to collect any samples from the Terminal Collection Pit at least once every six (6)  
25 months and failed to analyze samples for all pollutants regulated by the Pretreatment Permits for at least  
26 the past five (5) years.

27 284. Plaintiff is informed and believes, and thereon alleges, that samples collected by the PUC  
28 that have been analyzed for total O&G for the past five (5) years have been collected only from the

1 sampling box with one, or possibly two, exceptions.

2 285. Plaintiff is informed and believes, and thereon alleges, that the sampling conducted by  
3 the PUC did not, and does not, satisfy the Pretreatment Ordinance monitoring requirements, because the  
4 PUC did not analyze the collected samples for all parameters for which the Pretreatment Ordinance and  
5 the Pretreatment Permits establish wastewater effluent limitations.

6 286. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
7 Operator has failed, and continues to fail, to conduct required self-monitoring for the following  
8 pollutants: (1) temperature; (2) hydrocarbon oil and grease; (3) cyanide; and (4) phenols.

9 287. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
10 Operator has failed and continues to fail to develop and implement an adequate plan to control slug  
11 discharges at the Facility.

12 288. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
13 Operator has failed and continues to fail to develop, complete, and submit the reports required by Parts  
14 III.A., III.B., III.C., and III.D. of the Pretreatment Permits.

15 289. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
16 Operator has failed and continues to fail to submit complete and correct semi-annual reports.

17 290. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
18 Operator's semi-annual reports for 2012, 2013, 2015, and 2016 report that "No Notice of Violation has  
19 been received." The Facility Owner and/or Operator was in violation of the Pretreatment Ordinance in  
20 2012, 2013, 2015, and 2016, e.g., the Facility Owner and/or Operator failed to collect required samples  
21 and its wastewater discharges exceeded wastewater effluent limitations and prohibitions. The Facility  
22 Owner and/or Operator failed to report these violations.

23 291. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
24 Operator's semi-annual report dated July 25, 2016, fails to include a description of process changes or  
25 treatment system alteration, but simply states, "We implemented process and equipment changes as  
26 described in the above referenced response to notice of violation" dated February 8, 2016. The  
27 referenced February 8 "response" was not included as an attachment to the semi-annual report and was  
28 not submitted under penalty of perjury.

292. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator was in “significant non-compliance” with the Pretreatment Permits in 2012, 2014, and 2016.

293. Plaintiff is informed and believes, and thereon alleges, that based on pollutant levels in wastewater discharges from the Facility, on November 1, 2013, the PUC issued a Cease and Desist Order requiring the Facility Owner and/or Operator to take certain remedial actions.

294. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator did not satisfy the requirements of the November 1, 2013, Cease and Desist Order.

295. Plaintiff is informed and believes, and thereon alleges, that based on pollutant levels in wastewater discharges from the Facility, on November 19, 2010, June 15, 2011, and January 22, 2016, the PUC issued the Facility Owner and/or Operator Notices of Violation.

296. Plaintiff is informed and believes, and thereon alleges, that on four (4) occasions Defendant discharged wastewater into the POTW with a pH lower than 5.0 SU.

297. Plaintiff is informed and believes, and thereon alleges, that Facility Owner and/or Operator may have diluted wastewater discharges with storm water at the Terminal Collection Pit as a partial or complete substitute for adequate treatment to achieve compliance with the requirements of the Pretreatment Ordinance.

## **V. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Defendant’s Discharges of Contaminated Storm Water in Violation of the Storm Water Permit Effluent Limitations and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

298. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

299. Plaintiff is informed and believes, and thereon alleges, that Defendant failed and continues to fail to reduce or prevent pollutants associated with industrial activities at the Facility from discharging from the Facility through implementation of BMPs that achieve BAT/BCT.

300. Plaintiff is informed and believes, and thereon alleges, that discharges of storm water containing levels of pollutants that do not achieve compliance with BAT/BCT standards from the

1 Facility occur every time storm water discharges from the Facility.

2 301. Defendant's failure to develop and/or implement BMPs that achieve the pollutant  
3 discharge reductions attainable via BAT or BCT at the Facility is a violation of the Storm Water Permit  
4 and the CWA. *See* 1997 Permit, Effluent Limitation B(3); 2015 Permit, Section I(D) (Finding 32),  
5 Effluent Limitation V(A); 33 U.S.C. § 1311(b).

6 302. The Facility Owner and/or Operator violates and will continue to violate the Storm Water  
7 Permit Effluent Limitations each and every time storm water containing levels of pollutants that do not  
8 achieve BAT/BCT standards discharges from the Facility.

9 303. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
10 Operator's violations of Effluent Limitations of the Storm Water Permit and the CWA are ongoing and  
11 continuous.

12 304. Each and every violation of the Storm Water Permit Effluent Limitations is a separate  
13 and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

14 305. By committing the acts and omissions alleged above, the Facility Owner and/or Operator  
15 is subject to an assessment of civil penalties for each and every violation of the CWA occurring from  
16 May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
17 1365, and 40 C.F.R. § 19.4.

18 306. An action for injunctive relief is authorized by CWA Section 505(a), 33 U.S.C.  
19 § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm  
20 Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or  
21 adequate remedy at law.

22 307. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual  
23 controversy exists as to the rights and other legal relations of the Parties.

24 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

## 25 **SECOND CAUSE OF ACTION**

### 26 **Defendant's Discharges of Contaminated Storm Water in Violation of Storm Water Permit Receiving Water Limitations and the Clean Water Act.**

#### 27 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

28 308. Plaintiff incorporates the allegations contained in the above paragraphs as though fully

1 set forth herein.

2 309. Plaintiff is informed and believes, and thereon alleges, that discharges of storm water  
3 containing levels of pollutants that adversely impact human health and/or the environment occur each  
4 time storm water discharges from the Facility.

5 310. Plaintiff is informed and believes, and thereon alleges, that storm water containing levels  
6 of pollutants that cause or contribute to exceedances of WQS has discharged and continues to discharge  
7 each time storm water discharges from the Facility.

8 311. The Facility Owner and/or Operator violates and will continue to violate the Storm Water  
9 Permit Receiving Water Limitations each and every time storm water containing levels of pollutants that  
10 adversely impact human health and/or the environment, and that cause or contribute to exceedances of  
11 WQS, discharges from the Facility.

12 312. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
13 Operator's violations of Receiving Water Limitations of the Storm Water Permit and the CWA are  
14 ongoing and continuous.

15 313. Each and every violation of the Storm Water Permit Receiving Water Limitations is a  
16 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17 314. By committing the acts and omissions alleged above, the Facility Owner and/or Operator  
18 is subject to an assessment of civil penalties for each and every violation of the CWA occurring from  
19 May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
20 1365, and 40 C.F.R. § 19.4.

21 315. An action for injunctive relief under the Clean Water Act is authorized by Section 505(a),  
22 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably  
23 harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy,  
24 or adequate remedy at law.

25 316. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual  
26 controversy exists as to the rights and other legal relations of the Parties.

27 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

28 ///



**THIRD CAUSE OF ACTION**

**Defendant's Failure to Adequately Develop, Implement, and/or Revise a Storm Water Pollution Prevention Plan in Violation of the Storm Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

317. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

318. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to develop an adequate SWPPP for the Facility, in violation of the Storm Water Permit.

319. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to adequately implement the SWPPP for the Facility, in violation of the Storm Water Permit.

320. Plaintiff is informed and believes, and thereon alleges, that Facility Owner and/or Operator has failed and continues to fail to adequately revise the SWPPP for the Facility, in violation of the Storm Water Permit.

321. The Facility Owner and/or Operator has been in violation of the Storm Water Permit at the Facility every day from May 8, 2012, to the present.

322. The Facility Owner and/or Operator's violations of the Storm Water Permit and the CWA at the Facility are ongoing and continuous.

323. The Facility Owner and/or Operator will continue to be in violation of the Storm Water Permit and the CWA each and every day the Facility Owner and/or Operator fails to adequately develop, implement, and/or revise the SWPPP for the Facility.

324. Each and every violation of the Storm Water Permit SWPPP requirements at the Facility is a separate and distinct violation of the CWA.

325. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),

1 1365, and 40 C.F.R. § 19.4.

2 326. An action for injunctive relief under the CWA is authorized by Section 505(a) of the  
3 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
4 irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no  
5 plain, speedy, or adequate remedy at law.

6 327. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual  
7 controversy exists as to the rights and other legal relations of the Parties.

8 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth hereafter.

9 **FOURTH CAUSE OF ACTION**

10 **Defendant's Failure to Adequately Develop, Implement, and/or Revise a**  
11 **Monitoring and Reporting Plan in Violation of the Storm Water Permit and**  
12 **the Clean Water Act.**

13 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

14 328. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
15 set forth herein.

16 329. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
17 Operator has failed and continues to fail to develop an adequate M&RP for the Facility, in violation of  
18 the Storm Water Permit.

19 330. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
20 Operator has failed and continues to fail to adequately implement the M&RP for the Facility, in  
21 violation of the Storm Water Permit.

22 331. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
23 Operator has failed and continues to fail to adequately revise the M&RP for the Facility, in violation of  
24 the Storm Water Permit.

25 332. The Facility Owner and/or Operator has been in violation of the Storm Water Permit  
26 monitoring requirements at the Facility every day from May 8, 2012, to the present.

27 333. The Facility Owner and/or Operator's violations of the Storm Water Permit monitoring  
28 requirements and the CWA at the Facility are ongoing and continuous.

334. The Facility Owner and/or Operator will continue to be in violation of Section B and

Provision E(3) the 1997 Permit, Section XI of the 2015 Permit, and the CWA each and every day it fails to adequately develop, implement, and/or revise the M&RP for the Facility.

335. Each and every violation of the Storm Water Permit M&RP requirements at the Facility is a separate and distinct violation of the CWA.

336. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

337. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

338. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth hereafter.

#### **FIFTH CAUSE OF ACTION**

#### **Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.**

#### **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

339. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

340. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to submit accurate Annual Reports to the Regional Board, in violation of Sections B(14), C(9), and C(10) of the 1997 Permit.

341. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator's 2011-2012, 2012-2013, 2013-2014, and 2014-2015 Annual Reports failed to meet the monitoring and reporting requirements of the Storm Water Permit, in violation of Section B(14) of the 1997 Permit.

342. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator's 2015-2016 Annual Reports fail to meet the requirements of Section XVI(B) of the 2015 Permit.

343. The Facility Owner and/or Operator has been in violation of Section B(14) of the 1997 Permit and the CWA every day since at least May 8, 2012.

344. The Facility Owner and/or Operator has been in violation of Section XVI of the 2015 Permit and the CWA every day since at least July 15, 2016.

345. The Facility Owner and/or Operator's violations of the reporting requirements of the Storm Water Permit and the CWA are ongoing and continuous.

346. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

347. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

348. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays judgment against the Defendant as set forth hereafter.

### **SIXTH CAUSE OF ACTION**

#### **Defendant's Failure to Submit an Adequate Level 1 ERA Report in Violation of the Storm Water Permit and the Clean Water Act.**

#### **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

349. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

350. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to conduct a Level 1 status evaluation and submit a Level 1

1 ERA Report for the Facility.

2 351. Plaintiff is informed and believes, and thereon alleges, that the Facility Owner and/or  
3 Operator has conducted an inadequate Level 1 status evaluation and submitted an inadequate Level 1  
4 ERA Report.

5 352. The Facility Owner and/or Operator violations of the Level 1 ERA requirements of the  
6 Storm Water Permit and the CWA are ongoing and continuous.

7 353. Every day the Facility Owner and/or Operator conducts operations at the Facility without  
8 a Level 1 status evaluation and/or a Level 1 ERA Report, and/or an adequate Level 1 status evaluation  
9 and/or an adequate Level 1 ERA Report, is a separate and distinct violation of the Storm Water Permit  
10 and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

11 354. The Facility Owner and/or Operator has been in daily and continuous violation of the  
12 Storm Water Permit Level 1 status ERA requirements every day since at least July 1, 2016.

13 355. By committing the acts and omissions alleged above, the Facility Owner and/or Operator  
14 is subject to an assessment of civil penalties for each and every violation of the CWA occurring from  
15 July 1, 2016, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
16 1365, and 40 C.F.R. § 19.4.

17 356. An action for injunctive relief under the CWA is authorized by Section 505(a) of the  
18 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
19 irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no  
20 plain, speedy, or adequate remedy at law.

21 357. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual  
22 controversy exists as to the rights and other legal relations of the Parties.

23 WHEREFORE, Plaintiff pray judgment against the Defendant as set forth hereafter.

24 **SEVENTH CAUSE OF ACTION**

25 **Defendant's Numeric Effluent Limitations Exceedances in Violation of the**  
26 **Pretreatment Permits, the Pretreatment Ordinance, and the Clean Water Act.**

27 **33 U.S.C. §§ 1311, 1317, 1342, 1365(a) and 1365(f)**

28 358. Plaintiff incorporates the allegations contained in the above paragraphs as though fully

set forth herein.

359. Plaintiff is informed and believes, and thereon alleges, that the Facility Owners and/or Operator has exceeded the numeric effluent limitations established by the Pretreatment Permits on at least 47 occasions on 18 days as follows:

Sample Date	Pollutant Parameter	Result	Unit
11/14/12	Dissolved Sulfides	0.72	mg/L
11/15/12	Dissolved Sulfides	0.7	mg/L
11/28/12	Dissolved Sulfides	0.52	mg/L
8/30/13-9/12/13	Average Total Recoverable Oil and Grease	509.2	mg/L
8/30/13-9/17/13	Average Total Recoverable Oil and Grease	4239	mg/L
9/12/13	pH	4.41	SU
11/19/13	pH	5.4	SU
11/21/13	pH	4.3	SU
11/21/13	pH	4.3	SU
11/22/13	pH	4.7	SU
11/22/13	pH	4.7	SU
4/22/15	Average Total Recoverable Oil and Grease	1056.8	mg/L
4/29/15	Dissolved Sulfides	0.54	mg/L
12/15/15	Copper Total	6.43	mg/L
12/15/15	pH	5.2	SU
6/2/16-6/10/16	Average Total Recoverable Oil and Grease	470.8	mg/L

Sample Date	Pollutant Parameter	Result	Unit
10/12/16-10/21/16	Average Total Recoverable Oil and Grease	1608	mg/L
10/12/16-10/21/16	Average Total Recoverable Oil and Grease	1037	mg/L

360. The Facility Owner and/or Operator's violations of the numeric effluent limitations of the Pretreatment Permits and the CWA are ongoing and/or are intermittent and likely to be repeated.

361. Every day the Facility Owner and/or Operator discharges wastewater from the Facility into the sanitary sewer in excess of the numeric effluent limitations of the Pretreatment Permits is a separate and distinct violation of the Pretreatment Permits, the Pretreatment Ordinance, and Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311, 1317.

362. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

363. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

364. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff pray judgment against the Defendant as set forth hereafter.

#### **EIGHTH CAUSE OF ACTION**

#### **Defendant's Discharge of Prohibited Wastewater in Violation of the Pretreatment Permits, the Pretreatment Ordinance, and the Clean Water Act.**

#### **33 U.S.C. §§ 1311, 1317, 1342, 1365(a) and 1365(f)**

365. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.



366. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Part I.E.2. of the Pretreatment Permits by discharging wastewater from the Facility to the POTW with pH lower than 5.0 SU on 4 occasions over 4 days as follows:

Sample Date	Pollutant Parameter	Result	Unit
11/21/13	pH	4.3	SU
11/21/13	pH	4.3	SU
11/22/13	pH	4.7	SU
11/22/13	pH	4.7	SU

367. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Part I.G. of the Pretreatment Permits by diluting wastewater discharges with storm water at the Terminal Collection Pit as a partial or complete substitute for adequate treatment to achieve compliance with the requirements of the Pretreatment Ordinance.

368. The Facility Owner and/or Operator's violations of the wastewater prohibitions of the Pretreatment Permits and the CWA are ongoing and/or are intermittent and likely to be repeated.

369. Every day the Facility Owner and/or Operator discharges wastewater from the Facility into the sanitary sewer in violation of the wastewater prohibitions of the Pretreatment Permits is a separate and distinct violation of the Pretreatment Permits, the Pretreatment Ordinance, and Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311, 1317.

370. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

371. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

372. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual

1 controversy exists as to the rights and other legal relations of the Parties.

2 WHEREFORE, Plaintiff prays judgment against the Defendant as set forth hereafter.

3 **NINTH CAUSE OF ACTION**

4 **Defendant's Failure to Monitor as Required by the Pretreatment Permits, the**  
5 **Pretreatment Ordinance, and the Clean Water Act.**

6 **33 U.S.C. §§ 1311, 1317, 1342, 1365(a) and 1365(f)**

7 373. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
8 set forth herein.

9 374. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Part II of  
10 the Pretreatment Permits by failing to monitor wastewater discharges from the Facility as required.

11 375. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Sections  
12 123(a), 123(b), and 123(c) of the Pretreatment Ordinance by failing to monitor its wastewater discharges  
13 as required.

14 376. The Facility Owner and/or Operator's violations of Part II of the Pretreatment Permits,  
15 the Pretreatment Ordinance, and the CWA are ongoing and/or are intermittent and likely to be repeated.

16 377. Every day the Facility Owner and/or Operator fails to comply with Part II of the  
17 Pretreatment Permits is a separate and distinct violation of the Pretreatment Permits, the Pretreatment  
18 Ordinance, and Sections 301 and 307 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317.

19 378. By committing the acts and omissions alleged above, the Facility Owner and/or Operator  
20 is subject to an assessment of civil penalties for each and every violation of the CWA occurring from  
21 May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
22 1365, and 40 C.F.R. § 19.4.

23 379. An action for injunctive relief under the CWA is authorized by Section 505(a) of the  
24 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
25 irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no  
26 plain, speedy, or adequate remedy at law.

27 380. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual  
28 controversy exists as to the rights and other legal relations of the Parties.

1 WHEREFORE, Plaintiff prays judgment against the Defendant as set forth hereafter.

2 **TENTH CAUSE OF ACTION**

3 **Defendant's Failure to Report as Required by the Pretreatment Permits, the**  
 4 **Pretreatment Ordinance, and the Clean Water Act.**

5 **33 U.S.C. §§ 1311, 1317, 1342, 1365(a) and 1365(f)**

6 381. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
 7 set forth herein.

8 382. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Part III  
 9 of the Pretreatment Permits by failing to report to the PUC as required.

10 383. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Sections  
 11 125(a) and 125(b) of the Pretreatment Ordinance by failing to submit adequate applications to the PUC  
 12 in support of the 2010, 2013, and 2016 Permits.

13 384. Plaintiff is informed and believes, and thereon alleges, that Defendant violated Sections  
 14 125(a) and 125(b) of the Pretreatment Ordinance by failing to submit an application in support of the  
 15 Amended 2016 Permit.

16 385. The Facility Owner and/or Operator's violations of Part III of the Pretreatment Permits,  
 17 Pretreatment Ordinance, and the CWA are ongoing and/or are intermittent and likely to be repeated.

18 386. Every day the Facility Owner and/or Operator fails to comply with Part III of the  
 19 Pretreatment Permits is a separate and distinct violation of the Pretreatment Permits, the Pretreatment  
 20 Ordinance, and Sections 301 and 307 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317.

21 387. By committing the acts and omissions alleged above, the Facility Owner and/or Operator  
 22 is subject to an assessment of civil penalties for each and every violation of the CWA occurring from  
 23 May 8, 2012, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
 24 1365, and 40 C.F.R. § 19.4.

25 388. An action for injunctive relief under the CWA is authorized by Section 505(a) of the  
 26 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
 27 irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no  
 28 plain, speedy, or adequate remedy at law.

389. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays judgment against the Defendant as set forth hereafter.

#### **VI. RELIEF REQUESTED**

390. Plaintiff respectfully requests that this Court grant the following relief:

a. A Court order declaring the Defendant to have violated and to be in violation of Sections 301(a) and (b) of the CWA, 33 U.S.C. §§ 1311(a) and (b), for discharging pollutants from the Facility in violation of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations which include BAT/BCT requirements, for failing to meet receiving water limitations, and for failing to comply with the substantive and procedural requirements of the Storm Water Permit;

b. A Court order declaring the Defendant to have violated and to be in violation of Sections 301(a), 301(b), and 307 of the CWA, 33 U.S.C. §§ 1311(a), 1311(b), 1317, for discharging pollutants from the Facility in violation of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations, and for failing to comply with the substantive and procedural requirements of the Pretreatment Permits and the Pretreatment Ordinance;

c. A Court order enjoining Defendant from discharging pollutants in a manner inconsistent with an NPDES permit;

d. A Court order enjoining Defendant from discharging pollutants in a manner inconsistent with the Pretreatment Ordinance;

e. A Court order requiring Defendant to implement affirmative injunctive measures designed to eliminate Defendant's violations of the substantive and procedural requirements of the Storm Water Permit, the Pretreatment Permits, the Pretreatment Ordinance, and the CWA;

f. A Court order assessing civil monetary penalties for each violation of the CWA at \$37,500.00 per day per violation for all CWA violations between January 12, 2009 and November 1, 2015, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015, as permitted by CWA Section 309(d), 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009);

1 g. A Court order awarding Plaintiff their reasonable costs of suit, including attorney,  
2 witness, expert, and consultant fees, as permitted by Section 505(d) of the CWA, 33 U.S.C. § 1365(d);  
3 and

4 h. Any other relief as this Court may deem appropriate.

5  
6 Dated: May 8, 2017

Respectfully submitted,

7 LAWYERS FOR CLEAN WATER, INC.

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9 Caroline Koch

10 Attorney for Plaintiff  
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